INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "A": NEW DELHI

BEFORE SHRI G.S. PANNU,HON'BLE VICE PRESIDENT
AND
SHRI K. NARASIMHA CHARY, JUDICIAL MEMBER

ITA No. 3153/Del/2016
C.O. No.299/Del/2016
(In ITA No.3646/Del/2016)
Assessment Year: 2003-04

M/s Prasad & Co. P. Ltd., W-149, Greater Kailash-1, New Delhi. PAN: AAACP4487H	Vs.	DCIT, Central Circle – 13, New Delhi.

AND
ITA No.3646/Del/2016)
Assessment Year: 2003-04

Income-tax Officer, Ward 19 (3), New Delhi.	Vs.	M/s Prasad & Co. P. Ltd., W-149, Greater Kailash-1, New Delhi. PAN: AAACP4487H
(Appellant)		(Respondent)

Revenue by : Shri Sanjay Goel, CIT DR
Assessee by: Shri Manoj Garg, CA
Date of Hearing 07.10.2019
Date of pronouncement 16.10.2019

O R D E R

PER K. NARASIMHA CHARY,J. M.

All these three matters arise out of the order dated 29.3.2016 in Appeal No.306/15-16 passed by the Commissioner of

Income-tax (Appeals)-29, New Delhi ("CIT(A)") for the Asstt. Year 2003-04. Since the facts and issues are similar in all the matters, we deem it just and proper to dispose of these three appeals by way of this common order.

2. Brief facts of the case are that the assessee is a company incorporated as a private limited company and is a member of the Delhi Stock Exchange Association Ltd. (DSE) and National Stock Exchange of India Ltd. (NSE) and OTCEI Ltd. (over the counter exchange of India). It is engaged in the sale and purchase of shares on behalf of clients through stock exchange and earn brokerage income. For the Asstt. Year 2003-04, assessee filed its return of income on 30.3.2005 declaring a total loss of Rs.1,29,092/-. Assessment u/s 143(3) of the Act was complete by order dated 23.3.2006 by making addition of Rs.1,00,206/- on account of interest on FDRs and Rs.21,36,44,630/- on account of cessation of liability due to afflux of time .

3. In the appeal preferred by the assessee, ld. CIT(A) confirmed the addition of Rs.1,00,206/-, being the interest on the FDRs but granted relief to the assessee to the tune of Rs.20,97,92,602/- out of the addition of Rs.21,36,44,633/- made by the AO on account of cessation of liability- due to afflux of time.

4. Aggrieved by the confirmation of liability to the tune of Rs.1,00,206/- on account of FDRs and Rs.38,52,030/- on account of time barred liability and invocation of Section 43B of the Act in respect of the service-tax liability, assessee preferred ITA No.3153/Del/2016 whereas challenging the deletion of the addition to the tune of

Rs.20,97,92,603/- on account of the non existing creditors barred by limitation, revenuepreferred ITA No.3646/Del/2016. In Revenue's appeal, assessee preferred Cross Objection No.299/2016 stating that the learned CIT(A) correctly deleted the addition to the extent of Rs.20,97,92,603/- and further submitted that the sale and purchase of shares was done by the assessee on behalf of the clients and, therefore, the liability represents the amount due to the clients and cannot be taxed as assessee's income.

5. Now coming to the first ground in assessee's appeal,it relates to the addition of Rs.1,00,206/- on account of interest on FDRs. On this aspect the facts are that the assessee had fixed deposit with Global Trust Bank to the tune of Rs.11.03 lakhs, which was used as margin money for obtaining bank guarantee for NSE. This bank guarantee was made on 10.4.2001 and the maturity date was 10.4.2003 with a claim period up to 10.7.2003.

6. According to the learned AO since an interest of Rs.1,00,206/- was carried/paid by the bank and TDS was deducted during the year under consideration, the assessee was liable to declare the same in the financial statements and non-declaration by the assessee raises doubt as to the genuineness of the plea taken by the assessee that this amount was not considered as income during the year, because the auditors were under doubt as to whether amount would be paid to them or the Bank guarenteewould be invoked by NSE. On this premise, learned AO, did not accept the contention of the assessee and made addition of the said amount.

7. Learned CIT(A) recorded a finding that the interest was accrued to the assessee for the year under consideration, the assessee being a company is required to account for its income on a mercantile basis and the reason for the fixed deposit as towards bank guarantee is irrelevant in so far as the nature of accrual of interest is concerned. Learned CIT(A) further observed that inasmuch as the bank had deducted TDS on said income, the contention of the assessee is untenable and the learned AO had rightly brought this amount to tax. Ld. CIT(A), therefore, upheld the addition and dismissed the appeal. Aggrieved by the said finding, assessee preferred this appeal before us.

8. It is the submission of the learned AR that the assessee had never claimed the TDS credit in respect of the FDR and the TDS certificate in itself does not mean that the amount shall be taxed in a particular year. According to the learned AR, in the opinion of the auditors, the chances of invoking the bank guarantee by the stock exchange to settle their liability of outstanding dues are more and, therefore, they did not apply the principle of accrual and as a matter of fact, the interest on the FDR was shown as income in subsequent years on the maturity of FDRs under the head “Prior Period Interest”.

9. He further submitted that in CIT vs Dalmia Dairy Industries Limited (1991) 188 ITR 611 (Del), it was held that when the entire interest on fixed deposit which had matured was taxed on receipt basis, the question whether the interest was taxable in a particular assessment year on accrual basis is only academic. He further submitted that in view of the decision in PCIT vs Rajesh Prakash, 415 ITR 334, when the rate of tax is the same in both the assessment years,

whether the income was offered on receipt basis or accrual basis would only be academic.

10. On a perusal of record vide page no.16 of the paper book, we find that a sum of Rs.1 lac was shown as prior period interest for the Asstt. Year 2004-05 and such a fact was recorded by the ld. AO in the assessment order of the AY 2004-05. It is not in dispute that the rate of tax for both the years is the same. Further, there is no reason not to believe the cause advanced on behalf of the assessee that in view of the fair chances of the stock exchange invoking the bank guarantee to settle their liability of outstanding dues, the auditors of the assessee company entertained the opinion that accrual principle is not applied to the interest on the FDRs. Assessee, however, claims to have not taken credit of the TDS done by the bank on the interest on FDRs, which fact is not contradicted by the Revenue.

11. In these circumstances, we are of the considered opinion that the explanation of the assessee for declaring the interest income in subsequent year when it was received on receipt basis as is evidenced by the Assessment order for Asstt. Year 2003-04 is acceptable and more particularly in view of the fact that assessee does not stand to gain much by shifting the tax liability from AY 2003-04 to 2004-05. We accordingly allow ground No.1 of the assessee's appeal.

12. Ground No.2 of assessee's appeal and Ground No.1 of revenue's appeal relate to the addition of Rs.21,36,44,633/-. During the assessment proceedings, ld. AO, on a perusal of the details of the sundry debtors, found that out of a sum of Rs.45,70,05,540/-. He further found that there is a dispute in respect of Rs.23.31 crores with

M/s HCL Technologies Ltd., and that the assessee made certain payments during the year leaving a sum of Rs.21,36,44,633/- which according to the learned AO is a time barred one in as much as no confirmations were filed by the assessee. According to the learned AO, being time barred liability, such an amount is not at all payable by the assessee company and becomes the income of the assessee. He, therefore, brought it to tax.

13. During the appellate proceedings, at the request of the assessee, ld. CIT(A) directed the learned AO to make verification from the creditors. On that, the learned AO verified and submitted the report stating that some creditors did not respond and some creditors responded that such credit liability still exists but no details of ledger account were available and, in some cases, the verification could not be done as the parties were not found or not responded. It was argued before the learned CIT(A) that the credit balances are not trading liability and no benefit was obtained by the assessee, that opening credit balances cannot be considered as business income once accepted in earlier assessment years, and that credit balances were not time barred and even time barred liability is not taxable.

14. Learned CIT(A), however, held that since the assessee is in the business of trading in shares as broker and sales and purchases of shares are being made for the clients, the unpaid amount which was required to be paid by the assessee to its clients forms part of the trading activity and, therefore, they are receipts of the assessee. Learned CIT(A) held that the trading liability for more than three years as on 31.3.2003 was the income accrued to the assessee on account of

non- payment of such liability which could not have been enforced legally as per the Limitation Act. Some amounts are in the hands of the assessee for which payment have not been made even after a lapse of 12 years are liable to be added in the hands of the assessee. Learned CIT(A), however, took the view that the addition has to be made for the amounts towards the liability for more than three years and on that premise, he restricted the liability to Rs.38,52,030/-, being the amounts the payment for which was pending for more than three years. Learned CIT(A) gave relief in respect of the sum of Rs.29,97,92,603/-, being the amount pending payment for less than three years and in some cases the moment was there.

15. Learned AR argued before us on the same lines as the arguments were advanced before the learned CIT(A). According to him, so long as the liability is acknowledged by the assessee in their financials by showing the liability in the balance sheet duly signed by the Directors of the company, it cannot be said that the liability ceased to exist. Further, when the amounts are coming from the earlier years in which the same was accepted, now it is not open for the revenue to contend that the liability is ceased and such amount becomes the income of the assessee. Learned AR placed reliance on the decision of DCIT vs T. Jayachandran (2018) 406 ITR 1 (SC) to contend that the assessee holds the amount payable to the clients in fiduciary capacity as such, the liability of limitation has no application to the facts of the case. He also placed reliance on certain other decisions in support of this principle.

16. Learned DR, on the other hand, heavily relied upon the order of AO and submitted that the ld. CIT(A) erred in deleing the amounts, the payment of which is pending for less than three years while holding that the disputed creditors are trade creditors.

17. We have heard both the parties. In so far as the facts relating to the business of the assessee are concerned, there is no dispute. Assessee has been contending that as per the stock exchange mechanism when a client sells his share or security through a broker, who is a member of Stock exchange, the payment is received by the broker from the stock exchange which has to be paid to the client as per his specific directions and generally the broker used to take running account authorization from the clients to hold the funds with him to provide uninterrupted trading facility to the clients. Further, according to the assessee, the stock broker act as a bank and custodian of the client money and the credit balances would appear in the balance sheet.

18. In the case of T. Jayachandran (supra), the Hon'ble Apex Court held that the revenue has to see what income has really accrued, not by reference to physical receipt of income, but by the receipt of income in reality; that when the assessee had acted only as a broker and not allowing any claim of ownership, the receipt of money was only on behalf of his clients in trust; and that, therefore, such receipt cannot be termed to be the income of the assessee. For a similar principle, reliance is placed on the decision of the Hon'ble Supreme Court in the case of Pearless General Finance & Investment Co. Ltd. vs CIT (2019), 416 ITR 1 (SC) wherein the Hon'ble Apex Court held that it

is not a theoretical aspect but the reality of the situation that has to be viewed as a whole, which may lead to the conclusion that the receipts in question were capital and not income.

19. Now coming to the facts of the case, the undisputed facts clearly show that the assessee is entitled only to the brokerage but not to the sale proceeds which he holds on behalf of the clients. In view of the decision of the Hon'ble Apex court in the case of T. Jayachandran (supra), assessee holds such amount as trustee on behalf of the client and, therefore, such a receipt is not taxable in the hands of the assessee.

20. Even, according to the revenue, this amount represents the liability of the assessee and such liability has ceased. Learned AO did not spell out as to how and under what provision of law such liability has ceased to exist. Learned CIT(A) had taken a view that the liability exists in respect of the amounts the payment of which is pending for less than three years; and that in case of amounts the payment has been pending for more than three years, the liability ceased. On this theory, ld. CIT(A) gave remission of Rs.20,97,92,603/-, the amount in respect of which there is some moment or the payment is pending for less than three years. It is therefore, clear that according to the learned CIT(A), the liability in respect of the amounts for more than three years ceases.

21. Ostensibly, ld. CIT(A) was referring to the provisions of Limitation Act, 1963 where under the limitation of recovery of money was prescribed as three years. However, it seems that the learned CIT(A) lost sight of Section 18 of the Limitation Act whereunder it is stated

that a fresh period of limitation shall be computed from the time when the acknowledgement was signed by the person under liability admitting liability. Here, in this case, as stated above, the assessee had been showing the liability in the balance sheet which gives fresh lease of life to the liability and it cannot be said that the liability had ceased to exist and the amount had to be brought to tax.

22. We are, therefore, of the considered opinion that the authorities below are not justified in reaching to the conclusion that the liability ceased to exist and the amount has to be brought to tax. We are also not in agreement with the learned CIT(A) to state that the liability of the assessee to pay the amount to the clients is a trading liability. In view of the decision of the Hon'ble Apex court in the case of T. Jayachandran (supra), assessee holds such amount in fiduciary capacity. With this view of the matter, we find it difficult to agree with the authorities below that the liability of the assessee has ceased to exist or that the sum of Rs.38,52,030/- is taxable in the hands of the assessee. We, therefore, allow Ground No.2 of assessee's appeal and dismiss ground No.1 of revenue's appeal.

23. Consequently, we allow grounds raised by the assessee in Cross Objection.

24. Assessee has not pressed grounds no. 3 & 4, hence these are dismissed as not pressed.Grounds no.5 & 6, being general in nature, do not require any adjudication.

25. In the result, appeal and Cross Objection of the assessee are allowed and appeal of the Revenue is dismissed.

Order pronounced in the open court on 16th October, 2019.

Sd/-	sd/-
(**G.S. PANNU)**	**(K. NARASIMHA CHARY)**
VICE PRESIDENT	**JUDICIAL MEMBER**

Dated: 16th October, 2019.
VJ

Copy forwarded to

1. Applicant
2. Respondent
3. CIT
4. CIT (A)
5. DR:ITAT

ASSISTANT REGISTRAR
ITAT, New
Delhi

Date of dictation	7.10.2019
Date on which the typed draft is placed before the dictating member	9.10.2019
Date on which the typed draft is placed before the other member	9.10.2019
Date on which the approved draft comes to the Sr. PS/ PS	.10.2019
Date on which the fair order is placed before the dictating member for pronouncement	.10.2019
Date on which the fair order comes back to the Sr. PS/ PS	.10.2019
Date on which the final order is uploaded on the website of ITAT	
date on which the file goes to the Bench Clerk	
Date on which the file goes to the Head Clerk	
The date on which the file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the order	